

ENTERED

January 15, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

BRIAN KOPATZ,

Plaintiff,

VS.

LORIE DAVIS,

Defendant.

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CIVIL ACTION NO. 2:19-CV-360

**ORDER ADOPTING, AS MODIFIED, MEMORANDUM AND
RECOMMENDATION AND DENYING LEAVE TO PROCEED
IN FORMA PAUPERIS**

Plaintiff Brian Kopatz filed an application for leave to proceed *in forma pauperis* (D.E. 2). On December 4, 2019, United States Magistrate Judge B. Janice Ellington issued her Memorandum and Recommendation (“M&R”) that the application should be denied. (D.E. 8). The M&R reasoned that Plaintiff’s trust fund statement reflects a balance of \$17.54, so he can afford to pay the \$5.00 filing fee. Plaintiff timely filed his objection on December 18, 2019. (D.E. 10).

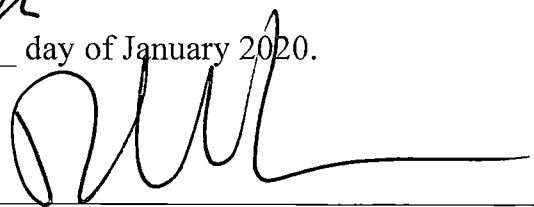
Plaintiff objects to the M&R’s factual finding that his trust fund had a balance of \$17.54. Plaintiff represents that his account balance is inaccurate and has been for some time. As evidence, he attached a commissary receipt that showed a beginning balance of \$0. (D.E. 10-2). He also attached a lay in pass. (D.E. 10-1).

In a December 19, 2019 order, the Court notified Plaintiff that it cannot rely on the receipts to override the certified trust fund account statement and granted him forty-five days to clear up any mistakes with the prison and submit a new certified trust fund

statement. On January 13, 2020, Plaintiff filed a certified trust fund account statement reflecting a balance of \$20.24. (D.E. 16). He also filed two letter motions on the subject. (D.E. 15; D.E. 17). The Court construes the motions to be part of the initial objection to the M&R. Plaintiff represents that he can do no more to clear up his account. Because the Court relies on the certified trust fund account statement, the Court **OVERRULES** Plaintiff's objection. The Court modifies the M&R to reflect a balance of \$20.24 in Plaintiff's account.

Thus, after reviewing the facts, conclusions of law, and recommendation set forth in the M&R, as well as Plaintiff's objection and all other relevant documents in the record, and having made a de novo disposition of the portions of the M&R to which the objection was directed, the Court **OVERRULES** Plaintiff's objection. Likewise, the motions supporting the objection (D.E. 15; D.E. 17) are **DENIED**. The Court **ADOPTS**, as modified herein, the findings and conclusions of the Magistrate Judge. Accordingly, Plaintiff's motion for leave to file as *in forma pauperis* is **DENIED**. Plaintiff is ordered to pay the \$5.00 filing fee within thirty (30) days.

SIGNED and ORDERED this 15th day of January 2020.

A handwritten signature in black ink, appearing to read 'DM', is written over a horizontal line.

DAVID S. MORALES
UNITED STATES DISTRICT JUDGE